

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4178 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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R R PATEL

Versus

DISTRICT DEVELOPMENT OFFICER

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Appearance:

MR AR MAJMUDAR for Petitioner

DELETED for Respondent No. 1

RULE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 17/11/2000

ORAL JUDGEMENT

The present petition is filed by the petitioner who was serving as a Junior Clerk in Kheda District Panchayat. At the relevant time he was placed under Taluka Panchayat, Petlad. It is the case of the

petitioner that he was initially appointed in November 1968 on the post of Junior Clerk in the Panchayat and that he was holding the same post even on the day of filing the present petition. It is case of the petitioner that from 14.11.1968 to 16.1.1980 the he was in active service and that thereafter the petitioner had proceeded on leave in January 1980 after submitting a leave report. It is his case that he was keeping indifferent health and was also not in proper state of mind and therefore, he had to remain on long leave and accordingly he remained on leave upto 25.7.1984. The petitioner was not informed anything by the office as to what had happened to his leave. Nor was he subjected to any inquiry by the department.

2. It is the case of the petitioner that thereafter the petitioner having felt slightly better went to resume duty in July 1984, but he was not given posting order. Subsequently by letter dated 15.1.1985 the petitioner was served with charge sheet in which it was mentioned that the petitioner remained unauthorisedly absent from 16.1.1980, but that notice could not be served on him as he had not accepted the same. It is the case of the petitioner that the petitioner replied to the said notice, which was in the form of charge sheet, by his letter dated 8.2.1985. In the reply the petitioner pointed out that the petitioner was sick and even medical certificate issued by Civil Surgeon, Kheda was also sent along with the application and that the petitioner had applied for leave from time to time in the prescribed form. It is the case of the petitioner that on 10.1.1986 the petitioner was informed by the respondents that the petitioner has not given any leave report from 31.7.1980 and therefore, it is proposed that he should be removed from service and the petitioner was asked to give a reply to the same. The petitioner replied to the said letter dated 10.1.1986 by his reply dated 15.1.1986, but as no decision was taken about his posting, the petitioner again wrote a letter dated 26.6.1986 and in response to that the petitioner was informed by letter dated 17.7.1986 that as inquiry is pending against the petitioner; after conclusion of said inquiry, appropriate orders will be passed. It is the case of the petitioner that since 1984 the petitioner had tried his level best to get a posting order but though neither any inquiry was pending nor he was placed under suspension, the respondents did not give him posting order and therefore, said action of the respondents be held to be highly unjust, arbitrary and illegal.

3. It is the case of the petitioner that by order

dated 11.2.1987, respondent no.1 had appointed an inquiry officer to hold inquiry against the petitioner and though the appointing authority of the petitioner is Deputy DDO; yet the order appointing inquiry officer was passed by respondent no.1, i.e. DDO, who in fact is the appellate authority. Therefore, initiation of inquiry itself is illegal.

4. It is further stated in the petition that when the inquiry was pending, by an order dated 13.10.1987, the petitioner was asked to resume his duties. It is the case of the petitioner that if the order can be given in 1987, why it should not have been given in the year 1984. It is further stated that thereafter by an order dated 18.3.1987 (1987 seems to be a mistake because the order was given to the petitioner on 24.3.1988), two increments of the petitioner with future effect were withheld and the period from 16.1.1980 to 16.10.1987 was ordered to be considered as "leave without pay".

5. The present petition is filed challenging the order dated 11.12.1989, which is produced at Annexure 'K', whereby the petitioner is informed that,

"you are informed with regard to your application dated 27.4.1988 that as you were punished by an order of the deputy DDO bearing no. EST/DP/ Vasi/ 425 dated 18.3.1987. Therefore, your Confidential Reports for subsequent five years are to be taken into consideration for deciding your promotions, and nothing is required to be done about your application for promotion and the same is filed."

6. The petitioner has sought for quashing of the said communication Annexure 'K' and has further sought directions to give deemed date of promotion to the petitioner on the post of Senior Clerk with effect from the date when respondent no.2 was promoted and to give difference of salary and appropriate pay fixation.

7. The petitioner has also prayed for quashing and setting aside the action of the respondent of treating the period 1984 to 1987 as leave without pay and further directing respondent no.1 to pay salary to the petitioner for the aforesaid period.

8. As it is clear from the petition, the petition is filed in the year 1990 and the petitioner was informed about treating the period from 16.1.1980 to 16.10.1987 as leave without pay by an order dated 18.3.1988.

Therefore, the petitioner cannot be allowed to ask for quashing of the said decision in the year 1990. The claim of the petitioner for quashing the same is barred by delay and laches and also on the ground of acquiescence.

9. It seems that the petitioner, after having resumed the duty in the year 1987 had made a representation as mentioned in para 8 of the petition and contended that the petitioner's case should be considered for promotion to the post of Senior Clerk from the year 1986 as one Shri Rathod, who according to the petitioner was junior to the petitioner, came to be promoted to the post of Senior Clerk in the year 1986. The petitioner has put forth his claim in his representation on the basis that now there is no inquiry pending against the petitioner and therefore, he should be given due promotion. This representation came to be rejected by the aforesaid letter dated 11.12.1989, Annexure 'K' to the petition.

10. It is surprising that the petitioner for having remained absent from 16.1.1980 to 16.10.1987, was communicated an order of stoppage of two increments with future effect, after an inquiry by an order dated 18.3.1987, Annexure 'I' to the petition, wherein the period from 16.1.1980 to 16.10.1987 is ordered to be treated as leave without pay and the authorities taking a sympathetic view of the matter have seen that the earlier service of the petitioner is not wiped out, the present petition is filed seeking reliefs as aforesaid.

11. The petitioner has no case whatsoever and no relief can be granted to the petitioner. The petition is dismissed. Rule is discharged with no order as to costs.

17th November 2000 (Ravi R. Tripathi, J.)

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